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MINISTRY OF INTERGOVERNMENTAL AFFAIRS

LOCAL GOVERNMENT DIVISION

BULLETIN NO. 18

LIABILITY PROTECTION

Hon. Thomas L. Wells  
Minister

D. W. Stevenson  
Deputy Minister


February, 1979

These bulletins are intended to be made available to municipal councillors and senior municipal staff.



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## INTRODUCTION

Two amendments were made to The Municipal Act in 1978 affecting liability protection for the staffs and members of municipal councils and local boards.

Concern had been expressed about this matter for some time by a number of municipal associations, including the Ontario Municipal Engineers Association and the Association of Municipalities of Ontario. Until these amendments, municipal employees and council members and the members and employees of local boards were not protected against personal liability arising from errors and omissions in the course of their employment.

This bulletin describes the liability-insurance provisions incorporated in these recent amendments. It is intended to help municipalities and local boards to assess the usefulness of these new provisions in meeting their needs.

Information on the general insurance needs of a municipality can be obtained from Bulletin No. 8 in this series entitled "Municipal Insurance", which outlines the different kinds of insurance available as well as the various ways to obtain it.

Where excerpts from the statutes appear in this bulletin, every effort has been made to represent them faithfully. However, to guard against error, please consult the official statutes for accurate reference.



## INSURANCE FOR MEMBERS OF LOCAL BOARDS

Section 390 of The Municipal Act, dealing with the authority to pass by-laws providing group-accident, group-public-liability and property-damage insurance, has been amended. Previously this authority only allowed for providing insurance for members of council when they travelled on municipal business or performed their duties either within or outside of the municipality. It did not protect members of a local board of the municipality. With this amendment, the authority has now been extended to include members of a local board of the municipality.

Section 390 of The Municipal Act now reads:

390 - (1) *The council of a municipality may pass by-laws for providing by contract with an insurer licenced under The Insurance Act,*

(a) *group accident insurance to indemnify any member of council or of a local board of the municipality, or his estate, against loss in case he is accidentally killed or injured; and*

(b) *group public liability and property damage insurance to indemnify any member of council or of a local board of the municipality, or his estate, in respect of loss or damage for which he has become liable by reason of injury to persons or property or in respect of loss or damage suffered by him by reason of injury to his own property,*

*while travelling on the business of the corporation or the local board or in the performance of his duties as a member of council or of the local board either within or outside the municipality.*

(2) *Where a local board is composed of members appointed by the councils of two or more municipalities, each council shall have in respect of the members appointed by it all the powers for providing insurance for a member of a local board that are conferred on a council by subsection 1.*



## ERRORS-AND-OMISSIONS INSURANCE

The second change adds a new paragraph to section 352. This new paragraph (67a) permits municipalities and local boards to protect their employees against personal liability arising from errors or omissions occurring in the course of their employment. The municipality can protect employees by either contracting for the insurance with a private company, or through a program of self-insurance, or by a combination of self-insurance and commercial coverage. It also permits the municipality to pay the cost of proceedings as well as the cost of defending employees in these actions. Since municipalities vary in the way they secure insurance protection, this provision does not require the municipality to change its existing practice. The new paragraph states:

*67a - For contracting for insurance to protect the employees of the municipality or any local board thereof, or any class of such employees, against risks that may involve liability on the part of such employees or class thereof and for paying premiums therefor or for paying any damages or costs awarded against any such employees or class thereof or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees including while acting in the performance of any statutory duty imposed by any general or special Act or for paying any sum required in connection with the settlement of such an action or other proceeding and for assuming the cost of defending any such person in such an action or other proceeding.*

*(a) In this paragraph,*

*(i) "employee" means any salaried officer, clerk, workman, servant or other person in the employ of the municipality or of a local board and includes a member of the police force of the municipality*



and any person or class of person designated as an employee by the Minister;

(ii) "local board" means a local board as defined in The Municipal Affairs Act.

(b) A local board has the same powers to provide insurance for or to make payments to or on behalf of its employees as are conferred upon the council of a municipality under this paragraph in respect of its employees.

This amendment only applies to the employees of the municipality or local board as defined in the new paragraph. It does not cover elected members.

In late 1978, The City of Toronto asked for and obtained private legislation extending the provisions respecting liability to protect both employees and members of the council, boards or commissions. This private legislation prompted a further amendment to The Municipal Act which extended this Toronto provision to apply to all municipalities in Ontario.

The amendment adds a new section, 390a, to the Act. The exact wording is:

390a - (1) The council of every municipality may pass by-laws for contracting for insurance to protect the members of the council or of any local board thereof, as defined in The Municipal Affairs Act, against risks that may involve liability on the part of such members and for paying premiums therefor or for paying any damages or costs awarded against any such members or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as members or officers of the municipality or local board including while acting in the performance of any statutory duty imposed by any general or special Act or for paying any sum required in connection with the settlement of such an action or other proceeding and for assuming the cost of defending any such member in such an action or other proceeding.



(2) A local board has the same powers to provide insurance for or to make payments to or on behalf of its members as are conferred upon the council of a municipality under this section in respect of its members.

AVAILABILITY OF ERRORS AND  
OMISSIONS LIABILITY INSURANCE

Errors and omissions liability insurance used to be available only to members of a recognized professional association, such as those for engineers, lawyers and physicians. Recently, with the increasing actions or threatened actions against employees and members personally, as well as the municipality or local board, the need for this coverage became apparent. The misinterpretation of zoning by-laws, inadequate instructions to developers, or improper building inspections are some of the potential causes of action against the employee or the member.

At the present time, two private insurance companies have designed municipal errors and omissions insurance policies that could apply to any size of municipality in Ontario.

Further information concerning this coverage may be obtained by contacting

O.M.E. Insurance Agency Limited  
Ontario Municipal/Educational Specialists  
100 University Avenue, Suite 500  
Toronto, Ontario  
M5J 1V6  
(416) 593-1535

or

Frank Cowan Company Limited  
Princeton, Ontario  
N0J 1V0  
(519) 458-4331



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A series of Financial Procedures Bulletins is being issued by the Municipal Budgets and Accounts Branch. Copies are available at \$1.00 each from the Publications Centre. Titles now available are:

F.1	Cash Management in Municipalities
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For additional information on this subject, get in touch with any of the field officers of the Local Government Division. They are located at these addresses:

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